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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,916	05/11/2001	Derek Aldcroft	PM277889	3570

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Receipt is acknowledged of Amendments of 1/10/03 and 1/28/03.

Claims 37-40 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

Applicant's traversal is noted; however the inventions are seen to lack technical features providing unity of invention and this are required to be separately considered, requiring *burdensome searches*.

Please note that the claims continue to carry ~~Num~~<sup>being</sup> as of the last amendment. It is not clear why 24, 25 were not in the case, however, there is no basis for introducing them, as they were not in the specification as originally filed. There is a notice of missing parts, but no amended claims have been acknowledged as having been submitted. However, we find the subject matter, of claim 45 and 46, a duplicate of the original 24 and 25, so the subject matter desired is present, and claims 24-49 are now present.

Claims 28, 41-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 is ambiguous; are all pore size ranges permitted, but when 20-50 A, then @ least 25m<sup>2</sup>/g is required?

Claim 41 is a method without a production step. There is none in claim 26. The claim constitutes a nominal method of ambiguous limitations; it is examined as a

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composition. Claims 43, 44 do not invoke methods of Production but rather of testing after production.

Claims 24-36, 41-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over <sup>WO-</sup>Rolle 93/09817.

Applicant claims a composition, but we fail here to give patentable weight to future intended use; since the composition constitutes the instant zeolite and biocide, it could be used in a liquid environment. P. 3 teaches uses of coating materials, paints, thus, liquids. The porous carrier material is zeolite (P.4) and isothiazolones (claim 6) are adsorbed onto the carrier. Efficacy; (no microbes) lasted for 7 days (p.7). Clearly sufficient adsorption of sufficient isothiazolone for a sufficient period time to preclude growth of microbes inherently provides, or alternatrails, implicitly provides, the characteristic of carrier/biocide combination to meet the requirements, if tested as applicant wishes the claimed composition to be tested. See 5@p.6, for amount of biocide adsorbed. An activated system is seen ~~me~~ at 6., P.6. The Bet surface areas are as instantly claimed; See 5.P.6, where 1mm adsorbs 1L/M<sup>2</sup>. Amorphous silica's are shown, <sup>egk1</sup> alkali silicate, fullers with (lines 13-15, P.6). The instant isothiazolones are used, and, in combination (p.4, lines 18-21).

Claims 24-34, 41-49 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over anticipated by Batts et al EP 832561.

Batts activate the microporous amorphous or Zeolite silicates as of the instant invention (Page 3, line 23 – line 15, 16) with adsorption of biocides, including the instant

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isothiazolones, Kathons (P. 4, line 54-8 P. 5). Biocides are @ 5-35% (P. 7, lines 23-40) and are used as coatings. The Batts particle coatings solve the problem of biocide leaching (Page 1). Although time frames and test conditions as are instantly claimed are unstated, since the same porous inorganic carrier, of the same porosity and surface area, activated, with the same biocides, at the same concentration, the same results, if tested as applicant claims, would inherently result. The tests are applied to a composition, the composition is claimed, not methods incorporating testing. The methods of production are inadequately claimed to define them as methods, and, as the same compositions are at Batts, the same results would accrue if they were subjected to light, heat for 40 days and 40 nights. The Batts data show minimal Leaching at 25 hours; obvious to find no worse at later times (40 days), since Batt's purpose is no Leaching. Furthermore, applicant shows no criticality for Y-Zeolites; many would do, if highly adsorbent, and that is what Batt's uses.

Applicant's arguments filed on 9/31/02 have been fully considered but they are not persuasive. Applicant's arguments, where persuasive, are the basis for withdrawn rejections, except for the consideration of non-elected species. Non-elected species have not been searched. Applicant's arguments Re Rollen were not persuasive, as in fact we do find the particulate composition, applied as a coating, with release of biocide when exposed to a Liquid. However, the composition is seen as the instant, regardless of intended uses, testing or production. Examiner hopes this office action is received in tact, and appreciates attorney's consideration.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
April 16, 2003



NEIL S. LEVY  
PRIMARY EXAMINER